# TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

**TO:** Mayor and Councilmembers

FROM/PHONE: Mark Kutney, AICP/(954) 797-1101

**SUBJECT:** Variance

Project Name and Location: Sever/Sever, 6650 SW 48 Street, generally located on the southeast corner of SW 48 Street and Walsh Road.

#### TITLE OF AGENDA ITEM:

V 1-4-01 Applicant: Mark Sever, petitioner/owner.

## **REPORT IN BRIEF:**

The applicant is proposing to construct two (2) duplex dwelling units on the 0.457 acre subject site. On July 7, 1999 Town Council approved this exact same variance request. The one year time limit on the variance has expired and the applicant has reapplied for the same variance. The subject property and adjacent parcels were rezoned RM-10, Medium Density Dwelling District as part of the Town initiated Phase II rezoning initiative in 1985. The adjacent properties were developed under the R-3 (Old Code) standards which required a 7.5 foot side setback with no required building separation. The applicant is requesting these variances in order to develop the subject site so that each unit faces the street and the back of the units face a large back yard.

**PREVIOUS ACTIONS:** July 7, 1999 Town Council approved an identical variance request for this purpose.

## **CONCURRENCES:**

The Planning and Zoning Board recommended to approve the request at its March 14, 2001 meeting (motion carried 4-0).

FISCAL IMPACT: None.

**RECOMMENDATION(S):** Motion to approve.

**Attachment(s):** Justification letter, Conceptual site plan, Location map, Land Use Map, Subject Site Map, Aerial.

Application #: V 1-4-01 Revisions:

Exhibit "A"

Original Report Date: 3/16/01

## **TOWN OF DAVIE**

Development Services Department Planning & Zoning Division Staff Report and Recommendation

## APPLICANT INFORMATION

## **Owner/Petitioner**

**Name:** Mark Sever

Address: 5580 NE 28 Avenue

City: Fort Lauderdale, FL 33308

**Phone:** (954)489-1045

## **BACKGROUND INFORMATION**

**Date of Notification:** March 7, 2001 **Number of Notifications:** 49

**Application Request:** Two (2) variances **FROM:** Section 12-81, which requires twenty (20) foot side setbacks in RM-10, Medium Density Dwelling Districts, **TO:** reduce the required side setback to seven and one half (7.5) feet; **FROM:** Section 12-81, which requires a minimum building separation of twenty (20) feet in RM-10, Medium Density Dwelling Districts, **TO:** reduce the required building separation to fifteen (15) feet.

**Address/Location:** 6650 SW 48 Street, generally located on the southeast corner of SW 48 Street and Walsh Road.

**Future Land Use Plan Designation:** Residential (10 DU/Acre)

**Zoning:** RM-10, Medium Density Dwelling District

**Existing Use:** Vacant

**Proposed Use:** Two (2) Duplex dwellings

**Parcel Size:** 0.457 acres (19,950 square feet)

## Surrounding Uses: Surrounding Uses: Surrounding Land Use Plan Designation:

North:	Multifamily Residential	Regional Activity Center
South:	Multifamily Residential	Residential (10 DU/Acre)
East:	Multifamily Residential	Residential (10 DU/Acre)
West:	Multifamily Residential	Residential (10 DU/Acre)

## **Surrounding Zoning:**

North: Griffin Corridor District Downtown (Zone 2), RM-10, Medium Density

**Dwelling District** 

South: RM-10, Medium Density Dwelling District East: RM-10, Medium Density Dwelling District RM-10, Medium Density Dwelling District West:

## **ZONING HISTORY**

**Related Zoning History:** None.

## **Previous Request on same property:**

Town initiated Phase II rezoning in October 1985 rezoned the subject site from R-3 (Old Code) to RM-10, Medium Density Dwelling District.

Town Council approved petition V 5-1-99 on July 7, 1999 granting two (2) variances **FROM**: Section 12-81, which requires twenty (20) foot side setbacks in RM-10, Medium Density Dwelling Districts, TO: reduce the required side setback to seven and one half (7.5) feet; FROM: Section 12-81, which requires a minimum building separation of twenty (20) feet in RM-10, Medium Density Dwelling Districts, TO: reduce the required building separation to fifteen (15) feet.

## **APPLICATION DETAILS**

The applicant is proposing to construct two (2) duplex dwelling units on the 0.457 acre subject site. On July 7, 1999 Town Council approved this exact same variance request. The one year time limit on the variance has expired and the applicant has reapplied for the same variance. The subject property and adjacent parcels were rezoned RM-10, Medium Density Dwelling District as part of the Town initiated Phase II rezoning initiative in 1985. The adjacent properties were developed under the R-3 (Old Code) standards which required a 7.5 foot side setback with no required building separation. In order to develop the subject site so that each unit faces the street and the back of the units face a large back yard, the two (2) variances requested are required.

## **Applicable Codes and Ordinances**

1. Section 12-81 of the Land Development Code requires twenty (20) foot side setbacks and a minimum building separation of twenty (20) feet in RM-10, Medium Density **Dwelling Districts.** 

## **Comprehensive Plan Considerations**

Planning Area: The subject site falls within Planning Area 9. This Planning Area is south of Griffin Road, generally north of Stirling Road, east of SW 76 Avenue and west of the Florida Turnpike. This area is predominantly agricultural in nature with scattered lowdensity single-family residential development. Low profile commercial development lines the Griffin Road, Davie Road, and Stirling Road corridors.

**Broward County Land Use Plan:** The subject site falls within Flexibility Zone 102.

Staff Analysis

The intent of the 20 foot side setbacks and 20 foot building separation required by the Land Development Code is for the consistent placement of buildings within the RM-10, Medium Density Dwelling District. The Palm Garden Park Unit 1 subdivision was created with the R-3 (Old Code) development standards as a guide to develop the area. The result of the 1985 Town initiated rezoning is that the parcels within this subdivision cannot be developed as they were intended at the time when the area was subdivided. Without variances being granted the parcels in this subdivision would be developed illogically with the sides of the structures facing the street. Over the past decade the Town has recognized the problem the rezoning has caused and as a result there have been at least 5 variances granted according to available records in this subdivision for the same purpose the applicant proposes. Staff finds that because of the above referenced special circumstances that apply to the subject site and the area in general that the request variance is reasonable and is in harmony with the general purpose and intent of the Land Development Code.

**Findings of Fact** 

Variances:

**Section 12-309(B)(1):** 

The following findings of facts apply to the variances requested.

(a) There <u>are</u> special circumstances or conditions applying to the land or building for which the variances are sought, which circumstances or conditions <u>are</u> peculiar to such land or building and <u>do not</u> apply generally to land or buildings in the same district, and that said circumstances or conditions <u>are not</u> such that the strict application of the provisions of this chapter would deprive the application of the reasonable use of such land or building for which the variance is sought, and that alleged hardship <u>is not</u> self-created by any person having an interest in the property.

Strict application of the code would still allow for development on the property, but would unreasonably restrict the site layout to the detriment of the neighborhood.

- **(b)** The granting of the variances <u>is not</u> necessary for the reasonable use of the land or building, but would allow proper orientation on the site, and that the variances as requested <u>are</u> the minimum variances that will accomplish this purpose.
- (c) Granting of the requested variances, <u>are</u> in harmony with the general purpose and intent of this chapter and <u>will not</u> be injurious to the neighborhood or otherwise detrimental to the public welfare.

The requested variances will allow the subject site to be developed in an aesthetically pleasing and logical manner that is consistent with the design and orientation of the property to the west and will be to the benefit of the neighborhood and future residents of these dwelling units.

## **Staff Recommendation**

<b><u>kecommendation:</u></b> Based upon the above and the finding of facts in the positive, staff		
recommends <u>approval</u> , of petition V 1-4-01.		
Planning & Zoning Board Recommendation		
The Planning and Zoning Board recommended to approve the request at its March 14, 2001 meeting (motion carried 4-0).		
Exhibits		
1. Justification letter		
2. Conceptual site plan		
3. Land Use Map		
4. Subject Site Map		
5. Aerial		
Prepared by: Reviewed by:		

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#### JUSTIFICATION FOR REZONING REQUEST

The subject site contains approximately 9.0397 gross acres that are vacant lands. The property is contiguous to the east side of S.W. 82<sup>nd</sup> Avenue, situated just north of Stirling Road. To the north are lands all either currently zoning with commercial designations or designated as commercial on the town's future land use map. Immediately to the east is land zoned B-3 commercial and already developed into a commercial center. To the south is Stirling Road, which is a divided arterial that separates the property from land to the south.

In 1997 and 1998, Pine Island Road was constructed between Griffin Road and Stirling Road, to the west of the subject site. Completion of this four lane divided highway altered the character of the area. The roadway now forms a direct link from I-595 to Stirling Road, which is south of the subject site, making it directly accessible and more urban in nature. As a result, the site is ideal for commercial development in that there is now easy access from the east, north and west.

The petitioner proposes rezoning of the property to zoning district B-2. This zoning would allow for the development of a commercial retail center.

A review of the rezoning amendment request should include consideration of the criteria listed in Sec. 12-307 of the Land Development Code to determine if the request should be favorably reviewed. These criteria with respect to the subject request are discussed below.

Criterion (a): The proposed change is contrary to the adopted comprehensive plan, as amended, or any element or portion thereof.

Policy 7-1 of the adopted comprehensive plan of the Town of Davie provides that the Town shall endeavor to expand its economic base through the expansion of the commercial sector of its economy. Further, Policy 7-4 of the comprehensive plan states that commercial land uses shall be generally located with access to primary transportation facilities including interstates, highways and arterials. Obviously both of these policies were considered when the entire surrounding area between University Drive to the east, S.W. 82<sup>nd</sup> Avenue to the west, Stirling Road to the south, and extending northward well beyond this tract were all designated as commercial on the Town's future land use plan map.

As a result, the rezoning request is consistent with the adopted comprehensive plan.

<u>Criterion (b)</u>: The proposed change would create an isolated zoning district unrelated an incompatible with adjacent and nearby districts.

The requested rezoning to B-2 is consistent and compatible with adjacent and nearby zoning districts. To the immediate east are commercial uses currently zoned B-2 and operating as commercial retail centers. The proposed zoning district is compatible and appropriate given the zoning districts and uses that surround the site. Appropriate buffers can be put in place to address any impact to the properties to the west.

The requested rezoning positively satisfies this criterion.

<u>Criterion (c)</u>: Existing zoning district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.

The current zoning designation of A-1 is deemed as a transitional designation pending rezoning into a commercial zone as specified by the town's future land use map. The rezoning falls squarely within the arterial boundaries of the commercial designation of the area.

As a result, the proposed rezoning satisfies this criterion.

<u>Criterion (d)</u>: The proposed change will adversely affect living conditions in the neighborhood.

The proposed B-2 designation will have no adverse impact on living conditions in the neighborhood. The proposed rezoning will allow for commercial development of the site as a retail center in an area where similar retail uses already exist to serve the community. As access to the area has improved, the proposed rezoning will allow for development of the site in accordance with the changing nature of the area.

The requested rezoning satisfies this criterion.

<u>Criterion (e)</u>: The proposed change will create or excessively increase automobile and vehicular traffic congestion above that which would be anticipated with permitted intensities or densities of the underlying land use plan designation, or otherwise affect public safety.

Certainly commercial development will increase automobile and vehicular traffic above that occasioned by the status as vacant land, but will not significantly increase traffic patterns over what currently exist with the commercial developments immediately to the east on University Drive. The proposed rezoning request will not increase automobile and vehicular traffic above the level already anticipated by the commercial designation on the Town's future land use map. There is nothing to suggest that the commercial development would adversely affect public safety.

The proposed rezoning satisfies this criterion.

<u>Criterion</u> (f): The proposed change will adversely affect other property values.

The proposed rezoning will have a positive impact on surrounding property values by changing from a vacant  $\lambda$ -1 designation to B-2 zoning which will allow for attractive upscale retail development.

As a result, the requested rezoning satisfactorily addresses this criterion.

<u>Criterion (g)</u>: The proposed change will be a deterrent to the improvement or development of other property in accord with existing regulations.

Land to the east of the subject site is already development in commercial uses. The balance of the land surrounding the subject property is designated for commercial use on the Town's future land use map. As a result, the proposed rezoning to B-2 will not be a deterrent to the improvement or development of the surrounding properties, but rather an asset to the development of the surrounding properties.

As a result, the requested rezoning satisfactorily addresses this criterion.

<u>Criterion (h)</u>: The proposed change will constitute a grant of special privilege to an individual owner as contrasted with the welfare of the general public.

The requested rezoning does not sacrifice the welfare of the general public for the benefit of an individual owner. The proposed change is consistent with the adopted comprehensive plan and, therefore, does not constitute a grant of special privilege.

Criterion (I): There are substantial reasons by the property cannot

be used in accord with existing zoning.

The existing zoning of the property is A-1, which allows for residential development at one dwelling unit per acre or agricultural uses. Given the property's size and location immediately adjacent to a developed commercial center to the east, it is not suitable for either of those uses. Further, such development under the A-1 designation would not be compatible with the existing surrounding development. Finally, it is understood that A-1 is a transitional zoning only in anticipation of the Town's designation and the comprehensive plan. As a result the proposed change is requested to allow a reasonable use of the property that is consistent with the surrounding development and the comprehensive plan.

<u>Criterion (j)</u>: The proposed zoning designation is the most appropriate designation to enhance the Town's tax base given the site location relative to the pattern of land use designations established on the future land up plan map, appropriate land use planning practice, and comprehensive plan policies directing land use location.

The proposed rezoning to B-3 will provide the greatest enhancement to the Town's tax base that could be provided on a tract of land of that size given this location. Again, the property is designate commercial on the Town's future land use plan map, and is in conjunction with comprehensive plan policies 7-1, 7-2, 7-3, and 7-4.

As a result, the requested rezoning satisfactorily addresses this criterion.

As has been demonstrated, the requested rezoning to B-2 is consistent with the adopted comprehensive plan, the Town's future land use map, and meets all the criteria contained in the Land Development Code. As a result this rezoning request merits favorable consideration.







